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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,796	12/20/2001	Mark S. Franke	KCC-16,487	9402
35844	7590	07/21/2005		
PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			EXAMINER REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 07/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,796

Applicant(s)

FRANKE ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5-2-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-8, 15-18, 38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 15-18 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/04 & 10/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5-2-05 has been entered.

### ***Specification***

#### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ribbon cover(s) directly bonded to the outer surface of the side panels in combination with the folded flat side seam as claimed in claims 2-8 and 15-18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

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be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Language Interpretation*

3. "Bonded" and "connected" are defined as set forth on page 5, lines 16 et seq. and page 6, lines 1-2. It is specifically noted that "bonded" and "connected" refers to both bonding and connecting which is direct and that which is indirect and that which is permanent or not permanent absent other explicit terminology, e.g. "direct", in combination therewith.

"Disposable" is defined as set forth on page 6, lines 7-8. "Ribbon cover" is defined as set forth on page 11, lines 10-12. Therefore, the language added to the last section of claims 5, 38 and 39 is now considered redundant. "Elastic" is defined as set forth on page 6, lines 10-14. It is noted that such definition uses the term "tends" which is defined as "To be likely", i.e. the definition of "elastic" is considered to be it is likely to, i.e. may, recover its original size and shape.

"Disposable article", "absorbent garment", and "personal care garment" are defined as set forth on page 13, line 19-page 14, line 1. The terminology "side seam" is defined on page 11, lines 17-19. With regard to the terminology "bonded directly" and the descriptions of the side seams in all the independent claims as now claimed as 5-2-05, as best seen in Figure 4B of the elected

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species, the edge portion is directly bonded to the outer surface of the same side panel by a bond 86 which can be adhesive or ultrasonic bonding. Therefore, similar structure, i.e. a bond connecting the adjacent surfaces of the same side panel, will be considered to meet such language.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clares UK '564 in view of Asahi PCT '220.

With regard to claims 38 and 39: See Claim Language Interpretation section supra, see Clares at title, abstract, Figures, page 1, lines 4-7 and 93 et seq and page 2, lines 65-67, i.e. garment, front region, rear region, crotch region and side panels are the waterproof trousers, edge portions are 11b and 12b, the inner surfaces are opposite 11a and 12a, the seam is between the edges and the fold line in 12, the folded portion of the edge portion is adjacent the arrow from 12, the bond directly bonding the edge portion of the second side panel and the outer surface thereof is 16 and the portion of 13 between it and 12b, see Claim Language Interpretation section supra, and the ribbon cover is portion 15, attention is again directed to the Claim Language Interpretation section supra, i.e. the claim language of the first two lines of the last section of these claims does not require direct attachment of the ribbon cover to the outer surface or the ribbon cover laying over and covering the portion of the side seam adjacent the outer surface of the second side panel. It is also noted that the claims do not require the or each ribbon cover

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cover the entire side seam and only extend from the waist opening to the leg opening, i.e. can't be longer than the seam. With regard to the language "personal care garment" in the preamble, see the cited portions of Clares. It is the Examiner's first position that the reference explicitly teaches a personal care garment in as much as that term has been defined. In any case, the Examiner's second position, the recitation "personal care" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Therefore the Clares reference clearly includes all the claimed structure except for 1) the seams being those of the side panels of the garment and 2) the specific width of the ribbon cover, i.e. the fusible portion 15. With respect to 1) the Clares reference clearly teaches that the seams as taught can be seams of waterproof trousers. Furthermore, it is well known that waterproof trousers include side panels with side seams. Therefore, to employ the seams as taught by Clares as the side seams of side panels of waterproof pants would have been obvious to one of ordinary skill in the art in view of the teachings of Clares and the known seams of waterproof trousers. With regard to 2), while Clares does not teach the dimensions of the fusible portion covering the seam, i.e. the ribbon cover 15, it does teach the fusible portion covers the seams of waterproof trousers and also bonds and seals the line of stitching and has a width. See also the English translation of '220, i.e. '679, at col. 8, lines 8-14, col. 5, lines 61-65 and paragraph bridging cols. 9-10, i.e. the fusible portion covering a seam of waterproof trousers

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which portion also bonds and seals the line of stitching has a width of 5mm to 20mm. Therefore to make the width of the Clares fusible portion, i.e. the width of 15, the width as taught by '220, i.e. 5mm to 20mm, (if not already) would be obvious, see In re Siebentritt, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution no needed to render such substitution obvious).

6. Claims 2-8, 13, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haman et al '830 in view of Clares UK '564 and Asahi PCT '220.

With regard to claim 5: See Claim Language Interpretation section supra, see Haman et al at title, abstract, Figures, especially Figures 3, 7 and 9, col. 1, lines 1-26 and col. 2, lines 10-21, col. 3, lines 2-9, and 35-44 and col. 4, lines 17-26, i.e. garment is a waterproof article such as a raincoat, edge portions are 10 and 12, the inner surfaces are opposite 3 and 5, the seam is between the edge 12 and the fold line of 4, the folded portion of the edge portion is adjacent 12, the bond directly bonding the edge portion and the outer surface of the same panel is 16, see Claim Language Interpretation section supra, and the ribbon cover is portion 20, attention is again directed to the Claim Language Interpretation section supra. It is also noted that the claims do not require the or each ribbon cover cover the entire seam and only extend a certain extent, i.e. can't be longer than the seam. Therefore the Haman et al reference clearly includes all the claimed structure except for 1) the seams being those of side panels of a pant-like garment, i.e. waist regions, a crotch region, waist opening and leg openings, and 2) the specific width of the ribbon cover. With respect to 1) the Haman et al reference clearly teaches that the seams as taught can be sealed seams of waterproof fabrics of waterproof articles such as raincoats. Furthermore, Clares and '220 teach that waterproof articles which use sealed seams between

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panels of waterproof fabrics not only include raincoats but also a broad range of clothes including trousers or overalls. See, e.g., Clares at col. 1, lines 4-7 and the English translation of '220, i.e. Yasue et al '679, at col. 1, lines 1-30 and col. 8, lines 10-13. It is also it is well known that waterproof trousers or overalls include side panels with side seams. Therefore, to employ the seams as taught by Haman et al as the side seams of side panels of waterproof pant-like garments would have been obvious to one of ordinary skill in the art viewing the teachings of Clares and '220 in light of the recognition that seamed panels of waterproof fabrics in any type of waterproof garment would benefit from strong waterproof seams and the desire of Haman et al to provide such seams in waterproof articles, not just raincoats, and the known seams of waterproof trousers. With regard to 2), while Haman et al does not teach the specific dimensions of the fabric 20 covering such seam, i.e. the ribbon cover, it does teach the cover and the bond between such and the fabric panels spans the seams of waterproof articles, i.e. raincoats, i.e. clothing, and overlie the outer surface of each panel of seamed fabric and that the seam extends from the fold line adjacent stitching 14 between the coextensive portions of the edge portion of the waterproof fabric panel 4 and its adjacent outer surface to form a waterproof seam and that both the cover and seam has a width and the width of the cover is greater than the width of the seam. See also the English translation of '220, i.e. '679, at Figures, col. 8, lines 10-14, col. 5, lines 61-65 and paragraph bridging cols. 9-10, i.e. seam of waterproof articles, i.e. trousers, i.e. clothing, from a fold line between coextensive portions of edge portions of water proof fabric panels to form a waterproof seam between the waterproof panels has a width about equal to that of elements 3a, 3b, i.e. 5mm to 20mm. Therefore to make the width of the Haman et al seam the width as taught by '220, i.e. about 5mm to 20mm, (if not already) would be obvious, see In re



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Siebentritt, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution no needed to render such substitution obvious). In so doing, the cover 20 of such seam would have width of at least about 5 mm to 20 mm since it is shown as wider than the seam. As seen in Figure 3, the width of the cover is about 4 times the width of the seam, i.e. about 20mm to 80mm, and extends equally therebeyond, i.e. about 7.5-20 mm beyond on each side. (Note col. 3, lines 37-41 and col. 2, lines 47-52). Therefore, the Examiner's first position, the prior art combination teaches or obviously suggests a ribbon cover having a width from at least about 5mm to 80mm, i.e. includes the dimension required by claim 5. In any case, the Examiner's second position, it is noted that Applicant has not disclosed the function, purpose or criticality of the specific dimensions of the seam and thereby, cover thereof. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ the claimed seam, and thereby cover, dimensions, since it has been held that where the general conditions of a claim are disclosed in the prior art, i.e. tape or fabric strip covering a seam of a pant-like garment, discovering the optimum or workable ranges involves only routine skill in the art. In re Allen, 105 USPQ 233. With regard to the language "personal care garment" in the preamble, see the cited portions of Haman et al. It is the Examiner's first position that the reference explicitly teaches a personal care garment in as much as that term has been defined. In any case, the Examiner's second position, the recitation "personal care garment" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or

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structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With regard to claims 2-4: The claim terminology “about” allows some leeway from the dimension it modifies. As discussed supra, the width of the seam is from about 5mm to 20mm.

With regard to claims 6-8: The claim terminology “about” allows some leeway from the dimension it modifies. See the Figures, 20 extends beyond the side edges of the seam, i.e. either 12 or to the right of dashed line 14 and discussion of claim 5 supra, i.e. the cover has or obviously has a width of “about” 15 mm and extends beyond the seam edges at least about 2mm or about 0mm to about 15mm.

With regard to claim 13: This is a product by process claim, see MPEP 2113. Therefore, even though such claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product by product claim is the same as or obvious from a product of the prior art the claim is unpatentable even though the prior art product was made by a different process. As best understood, see Figure 4B, the end product is considered to be a ribbon cover bonded to the panels. Therefore Hamman et al teaches such structure. Applicant’s attention is also invited to page 27, lines 14-16 of the instant specification, and the portions of Haman et al cited supra.

With regard to claim 15: Applicant additionally claims the garment having a further side seam, i.e. first and second seams and respective ribbon covers. However see discussion of claim 5 supra, especially with respect to section 1), i.e. obvious to have two such seams and covers in a pant-like garment. The preamble also recites the language “disposable garment” The rationale set forth supra with regard to the terminology “personal care garment” also applies here to the

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terminology, “disposable garment”.

7. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haman et, Clares and ‘220 as applied to claim 15 above, and further in view of Stopper ‘290.

Applicant claims at least the ribbon covers (claim 17) and at most the side panels and ribbon covers (claim 16) comprising elastic material. It is noted that the claims do not require the covers or panels be elastic or only include elastic materials. While Haman et al discloses elements 2, 4 and 20 being waterproof fabrics of the same material, the specifics of the material have not been set forth. However, see, e.g., Yasue et al ‘679 at col. 5, lines 5-7 and Stopper at col. 1, lines 33-37 (The disclosed “stretch and recovery properties” are considered to be “elastic” as set forth supra in the Claim Language Interpretation section, i.e. “tends to...” ). Therefore, to make the waterproof fabrics making the waterproof articles of Haman et al of a waterproof knit fabric as taught by Stopper instead would be obvious, see In re Siebentritt, supra.

### ***Response to Arguments***

8. Applicants’ remarks have been considered but are either deemed moot in that the issue discussed has not been reraised, i.e. the prior art rejections of certain claims based on Clares and ‘220 and the prior art rejections on Chupa, or are deemed not persuasive, i.e. the remaining rejections, for the reasons discussed supra. Specifically the arguments with regard to claims 38 and 39 with respect to Clares and ‘220 et al are narrower than the claim language which does not require direct connections of the cover to the outer surface of the seam.

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*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art cited teaches various seams and seam allowances.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
July 13, 2005